

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

AXA DISTRIBUTORS,)	
LLC and AXA ADVISORS, LLC.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.: 1:08-cv-00188
)	
GAYLE S. BULLARD, et al.,)	
)	
Defendants.)	

PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE

COME NOW Plaintiffs, AXA Distributors, LLC ("AXA Distributors") and AXA Advisors, LLC ("AXA Advisors"), and submit the following in response to this Court's July 11, 2008 Order to Show Cause in connection with Defendants' Motion to Reschedule Hearings on Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction.

This case arises out of Plaintiffs' motion to preliminarily and permanently enjoin an arbitration proceeding that has been filed by Defendants against AXA Distributors and AXA Advisors before the Financial Industry Regulatory Authority ("FINRA"). Defendants' arbitration proceeding is due to be enjoined because neither AXA Distributors nor AXA Advisors have a legal obligation to arbitrate the Defendants' claims. There is no written or oral agreement to arbitrate between the Defendants and either entity, the Defendants were not customers of either entity, and the arbitration proceeding does not arise in connection with the business activities of either entity.¹

¹ Indeed, in their Motion to Dismiss, the Defendants effectively admit that Plaintiffs' motion for preliminary and permanent injunctive relief should be granted as to AXA Advisors, as Defendants acknowledge that they erroneously named AXA Advisors as a respondent in the arbitration case, and state that they "do not intend to pursue claims against AXA Advisors, LLC." See Motion to Dismiss at p. 10, n. 6.

As the Third Circuit has held, forcing Plaintiffs to litigate in an arbitration forum to which they have not agreed constitutes *per se* irreparable harm which far exceeds any potential harm to the Defendants. *PaineWebber, Inc. v. Hartmann*, 921 F.2d 517, 515 (3d Cir. 1990). Effectively acknowledging the irreparable harm that Plaintiffs would suffer should the arbitration proceed, Defendants agreed with Plaintiffs to a stay of the arbitration pending the mediation of this matter. Defendants canceled the mediation, however, and pursuant to the current agreement between the parties, the stay of the arbitration is scheduled to be lifted on August 17, 2008. Accordingly, Plaintiffs' Answers in the arbitration proceeding are due to be filed by August 17, 2008. Once the Answers of AXA Distributors and AXA Advisors are filed, FINRA will immediately initiate the arbitrator selection process, and an initial pre-hearing conference will be scheduled shortly after the arbitrators are ranked and selected by the parties. In addition, Plaintiffs will be forced to comply with other FINRA procedures governing disclosures and scheduling related to 45 claimants. Thus, a preliminary injunction is necessary to protect AXA Distributors and AXA Advisors from the irreparable harm of expending resources and effort in participating in the arbitration dispute pending this Court's decision on the merits of their claims for permanent injunctive relief. *See Chase Manhattan Bank USA, N.A. v. Nat'l Arbitration Council, Inc.*, No. 3:04-CV-1205-T-32HTS, 2005 WL1270504, *3 (M.D. Fla. May 27, 2005).

This Court's Order, which originally scheduled the hearing on Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction for August 13, 2008, provided protection to AXA Distributors and AXA Advisors from the irreparable harm of defending the arbitration prior to this Court's consideration of the parties' pending motions.

Counsel for Defendants however, contacted counsel for Plaintiffs to request a postponement of the hearing scheduled for August 13, 2008. AXA Distributors and AXA Advisors agreed to a postponement of the hearing subject to Defendants' agreement to maintain the status quo by continuing the stay of the arbitration proceeding through the receipt of this Court's ruling on Plaintiffs' Motion for Preliminary Injunction. Counsel for Plaintiffs clearly communicated that AXA Distributors and AXA Advisors would gladly agree to accommodate the schedule of Defendants' counsel, but that these entities could not agree to prejudice themselves in doing so. Defendants, however, refused to agree to extend the stay of the arbitration proceeding in exchange for an agreement to postpone the August 13, 2008 hearing.

Plaintiffs have no objection to the acceleration of the hearing on the parties' pending motions. Likewise, Plaintiffs have no objection to the postponement of the hearing, subject to the maintenance of the status quo. Accordingly, should the Court agree to postpone the hearing to accommodate Defendants' counsel's schedule, Plaintiffs respectfully request that this Court also enter an order protecting the Plaintiffs from the per se irreparable harm that would result from having to defend the Defendants' arbitration proceeding. Plaintiffs AXA Distributors and AXA Advisors therefore respectfully request that this Court enter an order either (a) accelerating the hearing on the Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction or, in the alternative, (b) postponing the hearing and requiring the parties to continue the stay of the arbitration proceeding pending resolution of the Defendants' Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

/s/ Andrea Morgan Greene

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Andrew P. Campbell
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on this the 18th day of July, 2008.

/s/ Andrea Morgan Greene
OF COUNSEL